

(2) The federal share of compensation for insured losses under the Program.

(b) *Policies in force on the date of enactment.* For policies issued before November 26, 2002, the disclosure required by the Act must be provided within 90 days of November 26, 2002 (no later than February 24, 2003).

(c) *Policies issued within 90 days of the date of enactment.* For policies issued within the 90-day period beginning on November 26, 2002 through February 24, 2003, the disclosure required by the Act must be provided at the time of offer, purchase, and renewal of the policy.

(d) *Policies issued more than 90 days after the date of enactment.* For policies issued on or after February 25, 2003, the disclosure required by the Act must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy. For policies issued in late 2005 with coverage extending into 2006, see § 50.12(e)(2).

[68 FR 19306, Apr. 18, 2003, as amended at 71 FR 27570, May 11, 2006]

#### § 50.11 Definition.

For purposes of this subpart, unless the context indicates otherwise, the term “disclosure” or “disclosures” refers to the disclosure described in section 103(b)(2) of the Act and § 50.10. The term “cap disclosure” refers to the disclosure required by section 103(b)(3) of the Act and § 50.15.

[73 FR 53364, Sept. 16, 2008]

#### § 50.12 Clear and conspicuous disclosure.

(a) *General.* Whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure. See § 50.17 for model forms.

(b)(1) *Description of premium.* An insurer may describe the premium charged for insured losses covered by the Program as a portion or percentage of an annual premium, if consistent with standard business practice. An insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a “surcharge.”

(2) *Premium to reflect definition of act of terrorism.* If an insurer makes an initial offer of coverage, or offers to renew

an existing policy on or after December 26, 2007, the disclosure provided to the policyholder must reflect the premium charged for insured losses covered by the Act, consistent with the definition of an act of terrorism as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110-160, 121 Stat. 1839.

(c) *Method of disclosure.* An insurer may provide disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.

(d) *Use of producer.* If an insurer normally communicates with a policyholder through an insurance producer or other intermediary, an insurer may provide disclosures through such producer or other intermediary. If an insurer elects to make the disclosures through an insurance producer or other intermediary, the insurer remains responsible for ensuring that the disclosures are provided by the insurance producer or other intermediary to policyholders in accordance with the Act.

(e) *Demonstration of compliance.* (1) An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(2) If an insurer made available coverage for insured losses in a new policy or policy renewal in Program Year 3 for coverage becoming effective in Program Year 4, but did not provide a disclosure at the time of offer, purchase or renewal, then the insurer must be able to demonstrate to Treasury’s satisfaction that it has provided a disclosure as soon as possible following January 1, 2006.

(3) If an insurer made available coverage for insured losses in a new policy or policy renewal in 2007 or in the first three months of 2008 for coverage becoming effective in 2008, but did not provide a disclosure at the time of offer, purchase or renewal of the policy, then the insurer must be able to demonstrate to Treasury’s satisfaction that it has provided a disclosure as soon as possible following January 1, 2008.